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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 310 OF 1997

Sainath Engineering Works ... Petitioner

V/s

Engineering Labour Union & ors. ... Respondents

Mr. Sudhir Talsania with Mahesh Londhe i/by Sanjay Udeshi for the petitioner.

Mr. S.R. Nargolkar for the respondent No.1.

CORAM: SMT. NISHITA MHATRE, J.

DATED: 29TH JANUARY, 2007.

ORAL JUDGMENT:

1. The petitioner has filed the present petition challenging the award dated 16.8.1996 passed by the Presiding Officer, First Labour Court, Pune in Reference (IDA) No. 256 of 1989. By this award, the Labour Court allowed the Reference and directed the petitioner to reinstate the workman C.S. Newase with continuity of service and full back wages for the intervening period.

2. The petitioner which is a proprietory concern had employed several workmen in its establishment. One C.S. Newase who is concerned in the present petition, was one

of the workers employed by the petitioner. According to the petitioner, on 5.3.1989, 7 workmen were retrenched from service. The petitioner claims that when Newase was offered retrenchment compensation, he refused to accept the same and instead challenged the action of the petitioner, contending that he had been dismissed from service. Besides Newase, 6 other workmen were retrenched, 5 workmen have settled their disputes with the petitioner, whereas 1 joined Newase in contending that his services have wrongfully been terminated. It appears that, with the passage of time, all the workmen have settled their differences with the petitioner and the petition now concerns the dispute raised by the workman Newase alone.

3. After obtaining the Reference before the Labour Court, statement of claim was filed by the respondent Union on behalf of the workman Newase contending therein that the termination of service was illegal as retrenchment compensation was not offered and the seniority list was not exhibited. The written statement was filed by the petitioner denying the contentions raised in the statement of claim. Evidence of the concerned workman i.e. Newase and other workmen as also the proprietor’s brother was led before the Labour Court. The evidence which has been led by both parties

leaves much to be desired. The issues which had been framed by the Labour Court and are decided as follows:-

(1) Whether the second party proves that the services of the empoyees as per list have been illegally terminated by the first party ? **YES.**

(2) Whether the second party is entitled to have the relief claimed ? **YES.**

(3) What order ? **As per order below.**

However, the Labour Court ought to have framed the issues having regard to the pleadings on record. There ought to have been an issue as to whether the workman Newase was offered retrenchment compensation in accordance with Section 25-F of the Industrial Disputes Act, 1947. Another issue which ought to have been framed by the Labour Court is, whether the seniority list of the workmen, who were retrenched, was put up in accordance with Rule 81 of the Industrial Disputes Rules and whether there was a violation of Section 25-G of the Industrial Disputes Act, 1947. The Labour Court should also have framed an issue as to whether the workman was entitled to reinstatement with full back wages, assuming

that the retrenchment was illegal and improper. The Labour Court having failed to frame such issues, has resulted in the parties leading evidence in a haphazard and scanty manner.

4. The petitioner has also claimed that the workman concerned has been employed ever since he was terminated from service by the petitioner. All these factors should have been considered by the Labour Court before passing the award.

5. In my opinion, therefore, it would be in the fitness of things to remand the Reference for a fresh trial. The Labour Court will decide the dispute after framing proper issues as aforesaid. The parties are at liberty to lead both, oral and documentary evidence, afresh. The Labour Court shall dispose of the Reference within six months from today.

6. The impugned award is set aside and the reference is remanded to the Labour Court for a de novo trial. Rule made absolute.

7. Parties to appear before the Labour Court on 20/2/2007.

(SMT. NISHITA MHATRE, J.)